

FIRST REGULAR SESSION
[CORRECTED]
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 209
93RD GENERAL ASSEMBLY

0648S.10T

2005

AN ACT

To amend chapters 71, 92, and 227, RSMo, by adding thereto eighteen new sections relating to assessment and collection of various taxes on telecommunications companies, with an effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 71, 92, and 227, RSMo, are amended by adding thereto eighteen
2 new sections, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089,
3 92.092, 92.098, 227.241, 227.242, 227.243, 227.244, 227.245, 227.246, 227.247, 227.248, and
4 227.249, to read as follows:

71.675. 1. Notwithstanding any other provision of law to the contrary, no city or
2 **town shall bring any action in federal or state court in this state as a representative**
3 **member of a class to enforce or collect any business license tax imposed on a**
4 **telecommunications company. A city or town may, individually or as a single plaintiff in**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

5 a multiple-plaintiff lawsuit, bring an action in federal or state court in this state to enforce
6 or collect any business license tax imposed on a telecommunications company.

7 2. Nothing in this section shall be construed to preclude any taxpayer from
8 initiating an action in federal or state court as a representative member of a class seeking
9 injunctive relief against the Missouri department of revenue to enforce the imposition,
10 assessment, or collection of the business license tax provided under sections 92.074 to
11 92.098, RSMo.

92.074. Sections 92.074 to 92.098 shall be known as the "Municipal
2 Telecommunications Business License Tax Simplification Act".

92.077. As used in sections 92.074 to 92.098, unless the context clearly requires
2 otherwise, the following terms mean:

3 (1) "Business license tax", any tax, including any fee, charge, or assessment in the
4 nature of a tax, assessed by a municipality on a telecommunications company for the
5 privilege of doing business within the borders of such municipality, and specifically
6 includes any tax assessed on a telecommunications company by a municipality under
7 section 66.300, RSMo, and section 80.090, RSMo, section 92.073, section 94.110, 94.270, or
8 94.360, RSMo, or under authority granted in its charter, as well as an occupation license
9 tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

10 (a) Any state or municipal sales tax imposed under sections 144.010 to 144.525,
11 RSMo; or

12 (b) Any municipal right-of-way usage fee imposed under the authority of a
13 municipality's police powers under Section 253(c) of the Federal Telecommunications Act
14 of 1996, or under sections 67.1830 to 67.1846, RSMo; or

15 (c) Any tax or fee levied for emergency services under section 190.292, 190.305,
16 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the general assembly after
17 August 28, 2005, for emergency services;

18 (d) Any flat tax duly imposed on or before August 28, 2005;

19 (2) "Director", the director of the department of revenue;

20 (3) "Municipal", of or relating to a municipality;

21 (4) "Municipality", any city, county, town, or village in Missouri entitled by
22 authority of section 66.300, RSMo, section 80.090, RSMo, section 92.073, section 94.110,
23 94.270, or 94.360, RSMo, or under authority granted in its charter to assess a business
24 license tax on telecommunications companies;

25 (5) "Telecommunications company", any company doing business in this state that
26 provides telecommunications service;

8 rights as existed before the enactment of sections 92.074 to 92.089, but shall not be entitled
9 to reimbursement, or required to pay reimbursement, for any sums paid in the good faith
10 belief in the validity and constitutionality of sections 92.074 to 92.089.

92.098. The provisions of section 71.675, RSMo, are severable from the provisions
2 of sections 92.074 to 92.092. If any portion of sections 92.074 to 92.092 is declared
3 unconstitutional or the application of any part of sections 92.074 to 92.092 to any person
4 or circumstance is held invalid, section 71.675, RSMo, and its applicability to any person
5 or circumstance shall remain valid and enforceable. If any portion of section 71.675,
6 RSMo, is declared unconstitutional or the application of any part of section 71.675, RSMo,
7 to any person or circumstance is held invalid, sections 92.074 to 92.092 and its applicability
8 to any person or circumstance shall remain valid and enforceable.

227.241. Sections 227.241 to 227.249 shall be known as the "State Highway Utility
2 Relocation Act". The commission shall not be required to redesign any project plans or
3 mail additional notices, nor shall the owner of a utility facility be required to submit
4 additional relocation plans or otherwise comply with requirements of sections 227.241 to
5 227.249 for any construction project on a state highway for which the letting date was prior
6 to December 31, 2005.

227.242. As used in sections 227.241 to 227.249, the following terms shall mean:

2 (1) "Act of God", an unanticipated grave natural disaster or other natural
3 phenomenon of an exceptional, inevitable, and irresistible character, the effects of which
4 could not have been prevented or avoided by the exercise of due care or foresight;

5 (2) "Commission," the highways and transportation commission created under
6 section 226.020, RSMo, and article IV, section 29 of the Missouri Constitution, the director,
7 or designees of the director for the purpose of sections 227.240 to 227.248;

8 (3) "Construction project", all contracts for construction of state highways let
9 under section 227.100, except for contracts for maintenance or resurfacing determined by
10 the commission not to conflict with public utilities and routine maintenance and repairs
11 completed by employees of the commission. This term shall also include state highway
12 construction projects of transportation development districts and corporations under
13 chapter 238, RSMo, if such projects are awarded pursuant to section 227.100. The term
14 "construction project" shall not include projects for road beautification, road irrigation,
15 and drainage projects, culvert installation or repair, sound wall installation, decorative
16 lighting, landscaping, or other projects not directly related to improving or routing
17 highway traffic. The term "construction project" shall also not include any project
18 authorized by the commission to accommodate any private development, including a
19 shopping mall, stadium, office building, or arena;

20 (4) "Contractor", any person entering into a contract with the highway and
21 transportation commission for purposes of completing a construction project on a state
22 highway, including a subcontractor or supplier to such contractor;

23 (5) "Customer delays", delays in the relocation work due to delays caused by the
24 utility's customers, including but not limited to delays in getting written or oral approvals
25 from customers for permissible utility service cut-over dates;

26 (6) "Cut-over date", the date utility owner interrupts utility service to a utility
27 customer provided through an existing utility facility and switches the service over to a new
28 utility facility serving the customer;

29 (7) "Day" or "days", a business day or a period of consecutive business days
30 consisting of every work day excluding Saturdays, Sundays, and legal holidays;

31 (8) "Director", the director of the Missouri department of transportation appointed
32 pursuant to section 226.040;

33 (9) "Extreme weather event", a severe weather occurrence, including but not
34 limited to fire, flood, earthquake, tornado, wind, hurricane, storm, ice, abnormal rainfall,
35 blizzard, or extended periods of severe inclement weather;

36 (10) "Letting date", the date established by the commission for the acceptance of
37 bids by contractors under section 227.100;

38 (11) "Mail", a dated written transmittal sent to the addressee by regular or
39 certified mail;

40 (12) "Maintenance", routine work performed on state highways by employees of
41 the commission or contractors to the commission, including minor pavement and shoulder
42 repairs, striping, grading, irrigation ditch clearing, street overlays, and other work
43 determined by the commission not to conflict with public utilities;

44 (13) "Notice to proceed", notice by the commission to a contractor to proceed with
45 work on a contract awarded by the commission;

46 (14) "Owner", the individual, firm, joint venture, partnership, corporation,
47 association, cooperative, municipality, county, district, political subdivision, department,
48 agency, or any other institution owning or operating utility facilities;

49 (15) "Project plans", any plan for highway construction projects demonstrating the
50 need to design and conduct utility facility alterations or relocations due to the work;

51 (16) "Relocate" or "relocation", the adjustment of utility facilities, as the
52 commission or director may determine is necessary in connection with the construction of
53 a state highway. Relocation includes:

54 (a) Removing and reinstalling the utility facility, including necessary temporary
55 facilities;

56 (b) Moving, rearranging, or changing the type of existing utility facilities; and

57 (c) Taking any necessary safety and protective measures;

58 (17) "Relocation plan," a plan designed by the owner to carry out utility facility
59 relocation work to accommodate a construction project on a state highway;

60 (18) "Resurfacing", work which provides a new roadway surface for existing
61 pavement on a state highway, including minor base patching, intersection paving, shoulder
62 work, and guard rail work which is determined by the commission not to conflict with
63 public utilities;

64 (19) "State highway", a highway constructed or maintained at the cost of the state
65 or constructed with the aid of state funds or United States government funds or any
66 highway included by authority of law in the state highway system or any highway
67 constructed under the authority of a transportation development district or corporation
68 under chapter 238, RSMo, where such contract is awarded under section 227.100;

69 (20) "Utility contractor", a person contracting with an owner of a utility facility or
70 a subcontractor to a person contracting with an owner of a utility facility, for the alteration
71 relocation or installation of a utility facility in connection with a construction project on
72 a state highway;

73 (21) "Utility facility", any underground facility as defined in section 319.015,
74 RSMo, and aboveground facilities, including poles, lines, wires, and appurtenances for the
75 purposes of electrical power, telephone, telegraph, fiber optic and cable television services,
76 and any other purpose or which aboveground utility facilities may be located along state
77 highways;

78 (22) "Work", construction and services required of the contractor by the
79 contractor's contract with the commission, including excavation as that term is defined in
80 section 319.015, RSMo.

227.243. 1. At the earliest possible date in the design of a construction project on
2 a state highway, the commission shall attempt to determine what utility facilities are
3 located within the right-of-way of the planned construction project by researching permit
4 files and reviewing map files maintained by the commission. The commission shall also,
5 as necessary, conduct field investigations and contact local governments to identify any
6 utility facilities within the right-of-way.

7 2. Within thirty days of completion of the survey conducted under subsection 1 of
8 this section, the commission shall notify in writing owners of each known utility facility
9 that a construction project is planned that may conflict with their utility facility. The
10 notification shall include the name or route number of the highway, the geographical limits
11 of the planned construction project, a general description of the work to be done including

12 a preliminary plan, the desired date for completion of a relocation plan, and the
13 anticipated month and year a letting date could be set for the construction project.

14 3. The owner shall examine the notice and notify the commission in writing of any
15 utility facility not correctly described in the commission's notice. Within sixty days of
16 receiving the notice required in subsection 2 of this section, the owner shall provide a
17 written response to the commission. The response shall describe and provide the general
18 location of each utility facility of the owner by confirming the location shown in the
19 commission's notice or by providing additions or corrections.

227.244. 1. Upon completion of the initial design of the construction project, the
2 commission shall provide at least one set of project plans to each owner of a utility facility
3 identified under section 227.243.

4 2. The project plans shall show those portions of the construction project upon
5 which the owner's utility facilities are located and where the utility facilities of other
6 owners are located in relation to work required for the project. The commission shall also
7 provide with the project plans a description of any right-of-way still to be purchased and
8 the anticipated letting date of the project. The project plan shall be accompanied by a
9 complete set of plans including profile, cross-section, drainage, signal, lighting, signing
10 plans, temporary road plans that may affect utilities, and other pertinent plan sheets.
11 Upon request of the owner, the commission shall provide any additional plan information
12 needed by the owner to design and lay out the removal, relocation, or adjustment of
13 existing facilities and the placement of relocated or new utility facilities within the limits
14 of the construction project.

15 3. Within thirty days of receipt of the project plans, the utility owner shall develop
16 a preliminary plan of adjustment and return the marked-up project plans to the
17 commission. The plan of adjustment shall include:

- 18 (1) Verification that all utility facilities are shown;
- 19 (2) The proposed location of adjusted utility facilities;
- 20 (3) Any additional right-of-way requirements; and
- 21 (4) Any other concerns.

22 4. When two or more owners have facilities in the area encompassed by the
23 construction project, the commission shall schedule a utility coordination meeting as soon
24 as possible but no longer than thirty days from the date the project plans were mailed. The
25 commission's project manager and all owners are required to attend this meeting. If there
26 is a conflict between two owners which cannot be satisfactorily resolved by the owners, the
27 commission shall determine the most appropriate method to resolve the conflict between
28 the two owners, and, in making such determination, shall weigh equally the length of time

29 necessitated by each owner's proposal, and the relative cost to each owner if the other's
30 proposal is adopted. The commission shall notify all utility owners involved with the
31 project in writing of the commission's acceptance or revisions to the utility plan of
32 adjustment.

227.245. 1. Within one hundred twenty days of receiving written notice of approval
2 of the utility plan of adjustment from the commission, the owner shall provide the
3 commission with a relocation plan. The one hundred twenty-day clock stops after the
4 relocation plan is submitted by the owner. If, after timely submission of the relocation plan
5 by the owner, revisions or alterations are necessary for any reason, or if the original
6 relocation plan was incomplete due to information needed from other parties, the one
7 hundred twenty-day clock begins to run again when the needed information is received
8 back by the owner.

9 2. The relocation plan shall include a narrative description of work that will be
10 done in relocating the owner's utility facilities and whether the work or a portion of the
11 work must be coordinated with or is contingent upon work being performed by another
12 utility facility owner or the contractor to the commission. The relocation plan shall list, if
13 applicable, any anticipated issues or problems related to the acquisition of right-of-way.
14 The relocation plan shall, if applicable, detail the anticipated number of days to acquire
15 additional easements not provided within the new highway right-of-way. The relocation
16 plan shall also give estimates as to the time needed to obtain any necessary customer
17 approvals for cut-over dates, if necessary. The relocation plan shall state when the work
18 will be started and the length of time in days estimated to complete the work. It is
19 permissible for an owner to state in a relocation plan that the owner's work will be
20 completed within a stated number of days from the date that a contractor or another
21 owner completes certain identified work which interferes with the owner's work. The
22 relocation plan shall identify any contingencies, if applicable, that may impact the
23 anticipated start of relocation. The relocation plan shall also describe whether the plan is
24 incomplete due to:

25 (1) Other owners failing to coordinate their plans with the owner submitting the
26 plan;

27 (2) Other owners failing to provide information necessary to submit a complete
28 relocation plan;

29 (3) The commission failing to provide any information required by subsection 2 of
30 section 227.244; or

31 (4) Any other reason explained in the plan regarding the circumstances and cause
32 of the plan being incomplete.

33 3. The commission shall review the relocation plan to ensure compatibility with
34 permit requirements, the project plan, and the anticipated letting date and notice to
35 proceed for the project. If utility relocation is dependent upon or must be coordinated with
36 work to be completed by the contractor, the relocation plan shall assure timely completion
37 of the project. If the relocation plan is acceptable to the commission, the commission shall
38 notify the owner in writing within thirty days of receiving the plan. If the relocation plan
39 submitted by the owner is not compatible, reasonable, or does not allow timely completion
40 of the project, the commission shall advise the owner in writing as soon as practicable, but
41 not later than thirty days after receiving the relocation plan. The commission shall specify
42 in the notice which parts of the relocation plan it finds objectionable, and the reasons for
43 its conclusions. The owner shall submit a revised relocation plan within thirty calendar
44 days after receipt of notice by the commission that the relocation plan is not acceptable.
45 The commission shall review the revised relocation plan, and if the relocation plan is still
46 not acceptable, the commission shall provide a relocation plan to the owner. The owner
47 shall not be bound by the terms of the commission's relocation plan if such relocation plan:

48 (1) Requires the payment of overtime to employees to expedite the construction
49 project; or

50 (2) Requires the owner to comply with a deadline which is not feasible due, in whole
51 or in part, to one or more factors outside the control of the owner.

52 4. If the owner informs the commission, in writing, or the commission determines
53 that the owner's relocation work is dependent upon or must be coordinated with work
54 being performed by the commission's contractor, the commission shall convene a meeting
55 of the contractor and the one or more owners whose relocation work is dependent upon or
56 must be coordinated with the contractor's work. Such meeting shall be held after the
57 letting date at which bids were received for the construction project, but prior to the
58 issuance of a notice to proceed to the commission's contractor. After such meeting, and
59 before or concurrent with the issuance of a notice to proceed, the commission shall provide
60 a schedule for the relocation of utilities to the owner and the commission's contractor. If
61 the approved relocation plan, or a portion of such plan, is dependent upon or must be
62 coordinated with work to be performed by the contractor, the contractor shall notify the
63 commission of its best estimate of the date that all construction necessary for the relocation
64 of utilities will be completed, at least fourteen days prior to such date. If such completion
65 date is delayed due to weather or other causes, the contractor shall immediately notify the
66 commission of the delay and the revised expected completion date. The contractor shall
67 give a second notice to the commission five days prior to the date work will be completed
68 as necessary for relocation work to begin. It shall be the responsibility of the commission

69 to notify the owner or owners of the contractor's estimated completion dates. The
70 contractor may also notify the owner directly of such dates, if the contractor has received
71 information from the owner under subsection 7 of this section, but such notice shall not
72 relieve the commission of its obligation to notify the owner. If the contractor's delay causes
73 additional delay by the owner, the commission and the owner shall negotiate in good faith
74 to determine the new completion date.

75 5. (1) The commission shall notify the owner in writing not less than thirty days
76 before the owner is required to begin relocation provided for in the approved relocation
77 plan. Unless the owner has encountered excusable delay as set forth in subsection 4 of
78 section 227.248, the owner shall complete its work within the time frame described in the
79 relocation plan, and shall complete all work that can be done prior to construction before
80 the issuance of the notice to proceed, including work that may need to be coordinated with
81 other utility owners but is not dependent on the work of the contractor.

82 (2) The notice required by subdivision (1) of this subsection shall include the name,
83 address, telephone number, facsimile number, and electronic mail address of the
84 commission's contractor and any subcontractors performing work on the construction
85 project. Such information shall also include the name and title of an individual employed
86 by the contractor or subcontractor having primary responsibility for the construction
87 project. Within fifteen days of receiving notice, the owner shall provide to the commission
88 and the commission's contractor the name, address, telephone number, facsimile number,
89 and electronic mail address of the employee of the owner who is responsible for
90 implementation of the owner's relocation plan and the same information for any utility
91 contractor to the owner for purposes of carrying out the relocation plan.

92 6. The owner shall notify the commission when relocation work has started. During
93 the course of the relocation work, the commission may require owners to provide progress
94 reports until its relocation is completed. The owner shall notify the commission when all
95 relocation work is complete. All notices of either starting or completion of relocation work
96 and all monthly progress reports shall be provided within five days after such dates.

227.246. 1. If, prior to the letting date of the construction project, the commission's
2 project plan is changed so that additional or different utility relocation work is found
3 necessary, the commission shall furnish a revised project plan under section 227.244, and
4 the owner shall provide the commission with a revised relocation plan under section
5 227.245, except that the time allowed for the owner to submit the revised relocation plan
6 after receipt of the revised project plan shall not exceed sixty days.

7 2. If, after the letting date of the highway construction project, additional utility
8 relocation work is found necessary which was not indicated on the original project plan,

9 the commission shall provide the owner with a revised project plan within fifteen days and
10 the commission and the owner shall agree on a reasonable schedule for completion of the
11 additional utility location.

227.247. 1. The commission shall have authority to require that any required
2 notice, response, or plan be submitted by mail or certified mail. Otherwise notices, plans,
3 and other statements in writing may be provided by mail, facsimile, or electronic mail. The
4 commission may require that some form of proof of receipt be provided in regard to any
5 notice, plan, or other statement in writing. Upon mutual agreement between the
6 commission and an owner, additional time may be granted for the completion of any act
7 required by sections 227.241 to 227.249.

8 2. Nothing in sections 227.241 to 227.249 shall be construed to relieve a contractor
9 from making notice of excavation as required by sections 319.010 to 319.050, RSMo, of the
10 underground facility safety and damage prevention act, or complying with the
11 requirements of sections 319.075 to 319.090, RSMo, of the overhead powerline safety act,
12 except to the extent that any provisions of sections 227.241 to 227.249 require additional
13 obligations beyond those set forth in sections 319.011 to 319.050, RSMo, or sections 319.075
14 to 319.090, RSMo, in which case the requirements of sections 227.241 to 227.249 shall
15 prevail.

227.248. 1. If the owner of a utility facility fails to provide the responses or
2 corrections to project plans required by sections 227.243 to 227.246, the commission may
3 recover from the owner damages in the amount of up to one hundred dollars per day for
4 each day the required act is not completed.

5 2. If the owner fails to provide a relocation plan or fails to timely relocate utility
6 facilities in accordance with the relocation plan as required by section 227.245, the
7 commission may recover from the owner damages in the amount of up to one thousand
8 dollars per day for each day the required act is not completed.

9 3. The damages authorized by subsections 1 and 2 of this section may be recovered
10 through actions brought by the chief counsel to the commission, or may be referred to the
11 attorney general for appropriate action. An action to collect the damages authorized by
12 this section shall be brought in a court of appropriate jurisdiction. All damages collected
13 under this section shall be deposited in the state road fund.

14 4. No damages or fines of any kind shall be assessed for delays that result, in whole
15 or in part, directly or indirectly, from any of the following:

- 16 (1) Customer delays;
- 17 (2) Labor strikes or shortages;
- 18 (3) Terrorist attacks, riots, civil unrest, or criminal sabotage;

19 (4) Acts of God, or extreme weather events;

20 (5) Delays caused by staffing shortages in the geographic area near the
21 commission's construction project due to the owner's need to reassign an unusual number
22 of workers to any other area to respond to an act of God or extreme weather event;

23 (6) The failure of another owner to sufficiently complete its required relocation of
24 utility facilities that interfere with an owner's relocation plan;

25 (7) The failure of another owner or delay by another owner in submitting
26 relocation plans that interfere with an owner's relocation plan;

27 (8) Delays by the commission in acquiring necessary right-of-way or necessary
28 easements;

29 (9) Delays caused by facility damages or cable cuts caused by the commission's
30 contractor, other owners, or third parties;

31 (10) Unusual material shortages; and

32 (11) Any other event or action beyond the reasonable control of the owner.

33

34 The occurrence of any of the unusual events listed in this section shall constitute an
35 affirmative defense to the assessment of damages under the provisions of this section.

36 5. The removal and relocation of utility facilities shall be made at the expense of the
37 owners unless otherwise provided by the commission. If the owner fails to relocate the
38 utility facilities in accordance with the relocation plan as required by section 227.245, the
39 utility facilities may be removed and relocated by the state highways and transportation
40 commission, or under its direction, and the cost of relocating the utility facilities shall be
41 collected from such owner. If the state highways and transportation commission or its
42 designee removes and relocates the utility facilities, the utility owner shall not be liable to
43 any party for any damages caused by the commission's or the commission's designee's
44 removal and relocation of such facilities.

227.249. Any home rule city having a population of sixty thousand inhabitants or
2 greater or any charter county of the first classification may adopt ordinances, policies,
3 resolutions, or regulations consistent with sections 227.241 to 227.249 regarding the
4 relocation of utility facilities located within the right-of-way of streets, highways, or roads
5 under their respective jurisdiction, which are not state highways. Any ordinance, policy,
6 resolution, or regulation adopted under the authority of this section shall not infringe
7 upon, negate or otherwise abrogate an owner's right to construct, own, operate, and
8 maintain utility facilities within the right-of-ways of such political subdivision that the
9 owner otherwise enjoyed prior to the adoption of such ordinance, policy, resolution, or
10 regulation.

Section B. The provisions of sections 227.241 to 227.249 shall become effective
2 January 1, 2006.